

THOMAS E. FRANKOVICH (State Bar No. 074414)  
**A Professional Law Corporation,**  
1165 Hoff Way, #203  
Orland, CA 95963  
Phone (415) 389-8600  
Email: tfrankovich@disabilitieslaw.com

Attorneys for Plaintiff  
BYRON CHAPMAN, an individual

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BYRON CHAPMAN

Plaintiff,

v.

MUNDO'S CAFE; NJ PROPERTIES, INC;  
FERNANDO MUNDO dba MUNDO'S  
CAFÉ; and ELI MUNDO dba MUNDO'S  
CAFE

Defendants.

**CASE NO. 5:16-cv-02893-EJD**

**PLAINTIFF'S MEMORANDUM OF  
POINTS AND AUTHORITY RE:  
ACTUAL DAMAGES AND ARTICLE III  
STANDING**

To the court and the party(s) through their respective attorneys at law:

Plaintiff has Article III Standing and shall seek Actual Damages.

**I. ACTUAL DAMAGES:**

Plaintiff shall seek actual damages per Cal Civil Code 52 (a)

**II. STANDING:**

(See Code of Federal Regulations 28, §36.304 regarding removal of barriers):

(a) General. A public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where

1 such removal is readily achievable, i.e., easily accomplishable and able to be  
2 carried out without much difficulty or expense.

3 (b) Examples. Examples of steps to remove barriers include, but are not limited to, the  
4 following actions —

- 5 (1) Installing ramps;
- 6 (2) Making curb cuts in sidewalks and entrances;
- 7 (3) Repositioning shelves;
- 8 (4) Rearranging tables, chairs, vending machines, display racks, and other  
9 furniture;
- 10 (5) Repositioning telephones;
- 11 (6) Adding raised markings on elevator control buttons;
- 12 (7) Installing flashing alarm lights;
- 13 (8) Widening doors;
- 14 (9) Installing offset hinges to widen doorways;
- 15 (10) Eliminating a turnstile or providing an alternative accessible path;
- 16 (11) Installing accessible door hardware;
- 17 (12) Installing grab bars in toilet stalls;
- 18 (13) Rearranging toilet partitions to increase maneuvering space;
- 19 (14) Insulating lavatory pipes under sinks to prevent burns;
- 20 (15) Installing a raised toilet seat;
- 21 (16) Installing a full-length bathroom mirror;
- 22 (17) Repositioning the paper towel dispenser in a bathroom;
- 23 (18) Creating designated accessible parking spaces;
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(19) Installing an accessible paper cup dispenser at an existing inaccessible water fountain;

(20) Removing high pile, low density carpeting; or

(21) Installing vehicle hand controls.

### **III. STANDING:**

As of October 27, 2018 the following architectural existed at Mundo's Cafe:

- **No** accessible route from the base of the ramp to the patio.
- **No** accessible route connecting Mundo's to the public sidewalk.
- **No** 5% accessible interior dining.
- **No** 5% accessible interior dining.
- **No** accessible service counter.
- **No** accessible entrance door (lacks 10" "kick plate" on push side of door).

Plaintiff has Article III Standing and therefore has a right to seek a court order requiring defendant to remove these architectural barriers.

Dated: October 27, 2018

Respectfully submitted,  
THOMAS E. FRANKOVICH  
***A PROFESSIONAL LAW CORPORATION***

By: /s/ Thomas E. Frankovich  
Thomas E. Frankovich  
Attorney for Plaintiff BYRON CHAPMAN

THOMAS E. FRANKOVICH (State Bar No. 074414)  
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**DECLARATION OF THOMAS E.  
FRANKOVICH**

**I, THOMAS E. FRANKOVICH** attorney of record declare the following:

That I was informed by Plaintiff Byron Chapman that he was a guest at Mundo's Café on October 27, 2018 and that the following architectural barriers still exist.

- **No** accessible route from the base of the ramp to the patio.
- **No** accessible route connecting Mundo's to the public sidewalk.
- **No** 5% accessible interior dining.
- **No** 5% accessible interior dining.
- **No** accessible service counter.
- **No** accessible entrance door (lacks 10" "kick plate" on push side of door).

1 Dated: October 29, 2018

Respectfully submitted,  
THOMAS E. FRANKOVICH  
***A PROFESSIONAL LAW CORPORATION***

4 By: /s/ Thomas E. Frankovich

5 Thomas E. Frankovich  
6 Attorney for Plaintiff BYRON CHAPMAN